In re LI ET AL., Application No. 09/864,101
Amendment A

REMARKS

In response to the non-final Office action mailed February 23, 2005, please enter the amendments and consider remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein.

Applicants appreciate the thoughtful examination of the application, and for informing Applicants that claims 10-19 are allowed, and for returning the signed and dated 1449 indicating the Office's consideration of the cited reference.

Applicants note that an IDS was filed with the USPTO via facsimile on February 25, 2002, two days after first Office action was mailed. The entire IDS was received by the USPTO, as well as apparently a partial image of the first page, which shows up in the image file wrapper of this application. Applicants request the Office ignore these papers, as the IDS was not accompanied by the requisite fee. Applicants are submitting an IDS with this Amendment A, along with the cited reference and the requisite fee. Applicants request the Office consider this reference, and return the 1449 for the IDS filed on May 20, 2005, be signed, dated, and returned with a next Office action to indicate the Office's due consideration of the reference.

Applicants appreciate the Office detecting the typographical error that the phrase "according to" did not always include "to". Claims 6, 9, 23, and 29 are amended herein to correct these typographical errors, and therefore request the claim objections be withdrawn.

As the original claims are directed to statistics collection rates, statistics collection groups/pools, statistics collection acquisition rates, etc., Applicants have amended claims 1-7, 9, 20-24, and 26-30 to add the qualifier "statistics" pervasively throughout the claims and with support provided throughout and consistent with the original filed specification, such as, but not limited to the title, page 7, lines, 3-16, and even recited in allowed original independent claims 10 and 19. Additionally, the preambles to independent claims 1, 6, 20, 23, 26 and 29 are amended to include "for collecting statistics at multiple information rates" to better conform to drafter preference, with support provided at least by the title and summary of the original filed application. As the original claims were directed to collecting statistics anyway, adding these

qualifiers doesn't give up any subject anyway, but may better suit the drafter preferences of Applicants and the Office.

Additionally, claims 5 and 9 were rewritten in independent format, rather than being dependent of independent claims 1 and 6, with support provided by the claims themselves.

Applicants respectfully traverse all claim rejections, including the 35 USC § 112 and § 102(b) rejections, as the Office is required to construe the claims in light of, and consistent with the specification, and not in a vacuum as apparently done. If the rejected claims were properly construed, then the use of the term "overflow rate" in the claims is not indefinite, and the claims are allowable over Ma et al., US Patent 5,953,338, (the prior art reference relied upon in rejecting each of the rejected claims), as Ma et al. neither teaches nor suggests the claim limitations which are directed to collecting statistics, and Ma et al.'s statistical multiplexing neither teaches nor suggests the properly construed claim limitations of collecting statistics or the corresponding actual recited claim limitations.

More specifically, Applicants respectfully traverse the 35 USC § 112, 2nd paragraph rejections of claims 2-3, 7-9, 20-22, 24-25, 27-28, and 30 for the word "overflow" being indefinite. MPEP § 2173.02 requires that "[d]efiniteness of claim language must be analyzed, *not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.*" In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, *the examiner must consider the claim as a whole* to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph. (*Emphasis added.*)

One skilled in the art would understand the meaning of "overflow" in this application based merely on its titled "Method And Apparatus For Collecting Statistics From Elements at Multiple Collection Rates," well-known problem that statistics data will be lost if it is not collected before counters and other statistic collection mechanisms overflow, especially one

skilled in the art that has read the application, as well as reading this phrase in the context of the claims as required by the MPEP. The background section sets forth a statement of a problem with previous systems:

> "... Counting mechanisms, such as hardware registers and counters, may be used to accumulate these statistics, which may be then collected by one or more collection devices. In known systems, a collection device sequences through each counting mechanism in a round robin fashion. The rate of this collection cycle must greater than the fastest overflow rate of one of the counting mechanisms. Otherwise, data will be lost... Therefore, the number of statistics which must be collected continue to increase as does the rate at which each statistic must be collected before a data loss occurs because of an overflow condition. In certain systems, too many resources are required for statistics collection, and in certain circumstances, the collection device cannot sequence through the collection cycle fast enough to avoid data loss."

Original filed application, page 1, line 25 to page 2, line 7. Also, for example, the specification includes:

> "FIG. 1B illustrates another embodiment of an apparatus for collecting data from multiple ASIC elements 161-169. Collection processor 150 using memory 152 polls ASIC elements 161-169 at multiple, predetermined polling rates corresponding to the minimum collection rates required by ASIC elements 161-169 to collect data without loosing data due to an overflow condition."

Original filed application, page 6, lines 24-28.

For at least the reason that one skilled in the art after reading the specification and properly construing the claims would understand the recited use of the term overflow rate, the recited use of this term is not indefinite, and Applicants respectfully request the claim rejections be withdrawn.

In terms of the 35 USC § 102(b) rejections, claims 1-3, 5-7, 9, 23-24, and 26-30 stand rejected as being anticipated by Ma et al., US Patent 5,953,338. Claims 10-19 stand allowed. As claims 4, 8, 20-22, and 25 are not rejected based on prior art, the subject matters of these claims are apparently allowable. As pending rejected independent claims 1, 5, 9, 20, 23, 26 and 29 include limitations for "statistics" collection, and Ma et al. neither teaches nor suggests statistics collection, all rejected claims are believed to be allowable. Ma et al.'s statistical multiplexing neither teaches nor suggests the properly construed claim limitations of collecting statistics or the corresponding actual recited claim limitations. The Office relies on the multiplexing data functionality (e.g., multiplexing different data rates of traffic). Although the term statistical multiplexing includes the word "statistical," Ma et al. neither teaches collecting statistics information, let alone that recited in the claims. Thus, the anticipation rejection fails to comply with the MPEP as a proper anticipation requires the reference to teach each and every limitation. For at least these reasons, Applicants respectfully request all claim rejections be withdrawn.

Also, if the Office action complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicants request the claims be allowed and the application pass to issuance.

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FINAL REMARKS, Applicants believe that no extension of time is required. However, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By _____ 5/20/05
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